

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT HENRY TESSMER, JR,

Petitioner,

v.

STEVE SMITH, Acting Warden,

Respondent.

Case No. 2:24-cv-1500 CSK P

~~PROPOSED~~ ORDER

Petitioner is a state prisoner proceeding pro se. On November 26, 2024, respondent filed a request for leave to file a late responsive pleading. Respondent seeks an additional thirty days to file a responsive pleading due to a calendaring error.

On September 16, 2024, the Court ordered respondent to file a responsive pleading within sixty days. (ECF No. 8.) The responsive pleading was due on or before November 15, 2024. Thus, respondent's request for extension of time was filed after the deadline expired. While the Court will grant respondent's late request, respondent is cautioned that failure to timely meet court deadlines in the future may result in the imposition of sanctions.¹ See Local Rule 110.

¹ Petitioner is advised that it is settled law that default judgments are not available in federal habeas corpus actions. See Gordon v. Duran, 895 F.2d 610, 612 (9th Cir. 1990) (failure of the state to file a timely response to petition "does not entitle the petitioner to a default judgment"); Blietner v. Wellborne, 15 F.3d 652, 653 (7th Cir. 1994) ("default judgments are disfavored in habeas corpus cases") (collecting cases).

Accordingly, IT IS HEREBY ORDERED that:

1. Respondent's late request to file a responsive pleading (ECF No. 13) is granted; and
2. Respondent shall file a responsive pleading within thirty days from the date of this order.

Dated: December 2, 2024



CHI SOO KIM
UNITED STATES MAGISTRATE JUDGE

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